

11/15/00

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

JAMES D. WILLIAMS,

Petitioner

vs.

**ROBERT W. MEYERS, Superintendent,
and the PENNSYLVANIA BOARD OF
PROBATION and PAROLE,**

Respondents

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**: CIVIL ACTION NO. 3:CV-99-0664
: (CHIEF JUDGE VANASKIE)**

MEMORANDUM

This is a habeas corpus action under 28 U.S.C. § 2254 challenging adverse parole decisions of the Pennsylvania Board of Probation and Parole (the "Board"). Petitioner James D. Williams, proceeding pro se, contends that he has been denied parole solely because of his refusal to attend a religious-based drug and alcohol treatment program. Finding that the Board's decisions at issue in this case were premised on concerns for public safety and the fair administration of justice, and did not rest on Williams' refusal to complete a religious-based substance abuse treatment program, Magistrate Judge Thomas M. Blewitt has proposed that habeas corpus relief be denied.

Williams has objected to the Report and Recommendation, contending that the record compels the conclusion that the only reason he has been denied parole was his refusal to participate in the religious-based Alcoholics Anonymous ("AA") program offered at his place of

confinement, the State Correctional Institution at Rockview ("SCI-Rockview"). Having reviewed the record de novo and finding that (a) the Board articulated rational bases for the denial of parole other than the failure to complete an approved substance abuse treatment program, and (b) the Board is not requiring Williams to complete a religious-based program as a condition of granting parole, I will adopt the Report and Recommendation of Magistrate Judge Blewitt and deny the habeas corpus petition.

I. BACKGROUND

Williams is currently serving an aggregate sentence of 5 to 10 years for voluntary manslaughter and possession of an instrument of crime. His minimum sentence expired May 3, 1997. He has a maximum expiration date of May 3, 2002.

On March 26, 1997, the Board refused to parole Williams, and offered the following justifications in support of its decision:

SUBSTANCE ABUSE.
HABITUAL OFFENDER.
ASSAULTIVE INSTANT OFFENSE.
VERY HIGH ASSAULTIVE BEHAVIOR POTENTIAL.
VICTIM INJURY.
WEAPON INVOLVED IN THE COMMISSION OF THE
OFFENSE -- KNIFE.
YOUR NEED FOR TREATMENT.
FAILURE TO PARTICIPATE IN AND BENEFIT FROM A
TREATMENT PROGRAM FOR SUBSTANCE ABUSE.
UNFAVORABLE RECOMMENDATION FROM DEPARTMENT OF
CORRECTIONS.

(April 4, 1997 Board Notice.) Williams was scheduled for a parole review in September of

1997.

By notice dated November 12, 1997, Williams was advised that parole was again refused, with the Board citing his “need for counseling and treatment,” his “failure to participate and benefit from a treatment program for substance abuse,” and the “unfavorable recommendation from the Department of Corrections.” The notice further informed Williams that he was required to “participate in drug/alcohol and prescriptive program plan,” as well as “maintain a clear conduct record and [obtain an] institutional recommendation for parole.” He was scheduled for parole review in May of 1998.

By Notice dated June 24, 1998, Williams was again advised of an adverse parole decision. The explanation accompanying the denial of parole was as follows:

FOLLOWING AN INTERVIEW AND REVIEW OF YOUR FILE,
THE . . . BOARD . . . HAS DETERMINED THAT THE MANDATES
TO PROTECT THE SAFETY OF THE PUBLIC AND TO ASSIST
IN THE FAIR ADMINISTRATION OF JUSTICE CANNOT BE
ACHIEVED THROUGH YOUR RELEASE ON PAROLE. YOU
ARE THEREFORE REFUSED PAROLE AND ORDERED TO:

SERVE YOUR UNEXPIRED MAXIMUM
SENTENCE, 05-03-2002; WILL REVIEW EARLIER,
BUT NOT BEFORE AUGUST, 1999, IF
RECOMMENDED BY THE DEPARTMENT OF
CORRECTIONS/COUNTY PRISON STAFF
BECAUSE OF DEMONSTRABLE BENEFIT FROM
PARTICIPATION IN AN APPROPRIATE
TREATMENT PROGRAM(S) FOR SUBSTANCE
ABUSE.

In support of his habeas corpus petition, Williams has presented certificates of

completion “from other drug and alcohol treatment programs that he had completed that dealt with the educational aspects of drug and alcohol abuse, telling of the damages done to the body and the mind and the intestines, etc. (no religion or prayers involved).” (Brief in Support of Habeas Corpus Petition (Dkt. Entry 2) at 3.) Williams also maintains that he has been repeatedly denied admission to alternative, non-religious based substance abuse programs at SCI-Rockview. Williams contends that despite his “protests and religious concerns,” the Board is attempting to coerce him “into attending a religious based program in order to receive parole. . . .” (*Id.* at 5.)

II. DISCUSSION

Williams acknowledges that “in Pennsylvania, a prisoner has no constitutionally protected liberty interest in being released from confinement prior to the expiration of his or her maximum term.” Weaver v. Pennsylvania Board of Probation and Parole, ____ Pa. Cmwlth. ____, 688 A.2d 766, 770 (1997). “Parole is nothing more than a possibility, and, when granted, it is nothing more than a favor granted upon a prisoner by the state as a matter of grace and mercy shown by the Commonwealth to a convict who has demonstrated a probability of his ability to function as a law abiding citizen in society.” *Id.* Consequently, the Board has “broad administrative discretion in determining if and when a prisoner should be released on parole.” McGill v. Pennsylvania Department of Health, Office of Drug and Alcohol Programs, ____ Pa. Cmwlth. ____, 758 A.2d 268, 271 (2000).

The Board's discretion, however, is not unfettered. As Magistrate Judge Blewitt observed, habeas corpus relief is available "if an applicant was arbitrarily denied parole on the basis of impermissible criteria such as race, religion or political beliefs, or on criteria with no rational relationship to the purpose of parole. Block v. Porter, 631 F.2d 233, 237 (3d Cir. 1980)." (Report and Recommendation (Dkt. Entry 13) at 3-4.)

It has been recognized that forcing an inmate to participate in a religious-based substance abuse treatment program as a condition of parole may violate the Establishment Clause of the First Amendment. See, e.g., Kerr v. Farrey, 95 F.3d 472 (7th Cir. 1996). Williams insists that he is being compelled to participate in the religious-based AA program offered at SCI-Rockview as a condition of obtaining parole.

The Board's express reference to concerns for public safety and the fair administration of justice, however, belie Williams' assertions and provide a rational basis for the denial of parole divorced from the fact that Williams has refused to participate in the AA program. The Board also has the authority to reject parole where it finds that an inmate has not benefitted from treatment programs he has attended. In this case, the Board's articulated rationale for its decision indicates that it has found that Williams has not yet demonstrated that he has benefitted from the limited programs in which he has participated. Concern that an inmate has not overcome substance abuse problems that result in criminal activity is certainly proper justification for denying parole. But even if an inmate was shown to have overcome an

addiction, the Board would not be obligated to release him or her. Although the Board in this case has indicated that it would review its decision if recommended by the Department of Corrections because of a demonstrable benefit from Williams' participation in an appropriate treatment program for substance abuse, the Board has not committed to releasing Williams if these conditions are satisfied. Thus, the record does not support an inference that Williams has been denied parole solely because he has failed to complete the SCI-Rockview AA program.

Furthermore, the Board has not prescribed a particular program that Williams must complete in order to obtain a favorable parole decision. Instead, it is merely requiring successful completion of "an appropriate treatment program." Thus, it cannot be said that the Board is forcing Williams to attend a religious-based substance abuse program.

The gravamen of Williams' arguments, therefore, is not the denial of parole, but the content of the treatment programs offered at SCI-Rockview. Because the Board "has no power to order the prison officials to implement a new program or to change the existing program," Weaver, 688 A.2d at 775, Williams' recourse is not by way of a challenge to the denial of parole but by way of an action contesting the Department of Corrections' administration of substance abuse programs at SCI-Rockview. In Weaver, the court held that a prisoner's challenge to a prison rape treatment program that required an admission of guilt purportedly in violation of Fifth Amendment rights could not be litigated by appealing an adverse parole decision. Id.

The court observed that in such a context the prisoner “would be challenging the . . . administration of the treatment program, [and] the proper vehicle to raise that challenge would be via a cause of action against the Department [of Corrections] raising the constitutionality of the treatment program and not via an appeal from a decision of the Board denying parole.” *Id.*

This rationale applies with equal force here. Because the failure to complete an appropriate treatment program supplies a reasonable basis for a parole decision, Weaver’s recourse is not by way of a habeas corpus petition contesting the denial of parole, but by way of an action against the Department of Corrections challenging the content of the programs made available to him. Indeed, Kerr v. Farrey, *supra*, on which Williams places principal reliance, was a § 1983 action against prison officials challenging the constitutionality of its narcotics treatment program, and not a habeas corpus petition contesting an adverse parole decision.

Significantly, Weaver has brought a § 1983 action in this court, docketed to 3:CV-99-1282, challenging the administration of the substance abuse treatment program at SCI-Rockview. That action provides the appropriate avenue for litigating the question of whether the programs that Williams is being required to attend to obtain a favorable institution recommendation pertaining to parole infringe First Amendment rights. Accordingly, Weaver’s challenge to the adverse parole decisions will be denied.¹

¹That the Board is not mandating completion of a religious-based substance abuse
(continued...)

III. CONCLUSION

For the reasons set forth above, the Report and Recommendation of Magistrate Judge Blewitt will be adopted and the habeas corpus petition denied. An appropriate Order is attached.

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Middle District of Pennsylvania

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¹(...continued)

treatment program is made plain by the Board's notice of August 21, 2000, reiterating its decision to deny parole. In that notice, a copy of which has been filed in Williams' civil rights action, the Board has once again explained that it has denied parole because it has "determined that the mandates to protect the safety of the public and to assist in the fair administration of justice cannot be achieved through . . . release on parole." The Board has further indicated that at his next interview in May of 2001 it would consider whether Williams had successfully completed a non-religious based treatment program for substance abuse. This statement by the Board reinforces the conclusion that Williams is not being compelled by the Board to complete a religious-based treatment program as a condition of parole.

1. The Report and Recommendation of Magistrate Judge Blewitt filed on January 19, 2000 (Dkt. Entry 13) is **ADOPTED**.
2. The petition for a writ of habeas corpus is **DENIED**.
3. Because Williams has not made a substantial showing of the denial of a constitutional right in the actions of the Pennsylvania Board of Probation and Parole at issue in this case, a certificate of appealability under 28 U.S.C. § 2253(c) is **DENIED**.
4. The Clerk of Court is directed to mark this matter **CLOSED**.

5. The Clerk of Court is further directed to cause a copy of this Order and the foregoing Memorandum to be sent to Magistrate Judge Blewitt.

Thomas I. Vanaskie, Chief Judge
Middle District of Pennsylvania

FILED: 11/15/00